82-1419

NO. _____

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ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

JANICE M. HAYES,

Petitioner,

vs.

THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA: ELMER GUNDERSON, NOEL MANOUKIAN, JOHN MOWBRAY, CHARLES SPRINGER and THOMAS STEFFEBM Individually and in their capacities as Justices of the Nevada Supreme Court,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JANICE M. HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Petitioner

(Petitioner has not been an attorney for a sufficient length of time for admission to the Bar of this Court.)

February 17, 1983

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QUESTIONS PRESENTED

1. This Court lacks jurisdiction as the case was never properly "in" the Court of Appeals as the district court's unsigned Minute Order dismissing the Complaint without opinion was not a final judgment pursuant to 28 U.S.C. Sec. 1291; the question was not certified; the case does not fall within the collateral orders exception and there was no Fed. R. of Civ. P. 54(b) certification.

2. If this Court granted certiorari in 1980 in one of the three cases encompassed in the within action in an appeal taken pursuant to 28 U.S.C. Sec. 1257(2), and as Hayes was never so advised, she should be allowed to file a brief now and proceed in accordance with said grant.

3. The Court of Appeals erred in stating that it "affirmed" the district

court whereas there was no opinion or decision to affirm, and in independently raising and erroneously deciding issues of fact.

4. Nevada Rule of Appellate Procedure 46(b), which formerly prohibited litigation in proper person before the Nevada Supreme Court, was and is unconstitutional and invalid on its face and as applied to petitioner.

5. This Court's recent denial of certiorari in a related case, No. 82-956, Hayes v. Valley Bank, et al., does not operate as a res judicata precendent as said case was also not properly in this Court or the Court of Appeals as there was no fianl judgment from the district court.

6. The Court of Appeals panel demostrated a bias of which Hayes was unaware, and she has been deprived of due process as the Court issued its order and has

subsequently denied her the right to respond to the court's erroneous "findings," conclusions and prejudicial comments.

The petitioner Janice Hayes respectfully prays that a writ of certiorari issue to review the Memorandum Order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on June 17, 1981, and the Order entered in this case on November 22, 1982.

As set forth hereafter, petitioner contends that the order of the district court was not a final judgment in that said Order dismissed only the Complaint, but petitioner has been prevented from obtaining an Order from the Court of Appeals dismissing its Orders.

As the Clerk of this Court will not docket compound petitions, petitioner makes this petition for a writ of certiorari and she will file a separate Petition For Writ of Mandamus to the Court of Appeals to vacate its Orders for want of jurisdiction and to remand this case to the district court for resolution of the federal questions

presented.

OPINIONS BELOW

The judgments of the United States Court of Appeals and of the United States District Court for the District of Nevada were not reported.

The district court dismissed the Complaint without opinion and denied rehearing and struck petitioner's motion for additional findings of fact, for entry of formal judgment of dismissal or for leave to amend.

The orders of the district court are in the appendix hereto at p.7a, 8a and 9a, infra, and of the Court of Appeals at p.1a and 5a, infra.

JURISDICTION OF THIS COURT

As Petitioner has stated, this Court does not have jurisdiction pursuant to 28 U.S.C. Sec. 1254.

Petitioner brings this petition for writ of certiorari only because the Clerk

of this Court has refused to docket Hayes's previously submitted "Petition For Writ of Certiorari Or In The Alternative, Petition For Writ Of Mandamus," which petition was timely filed within the extension of time granted by Mr. Justice Rehnquist, on December 10, 1982 from the Order of the Court of Appeals entered on June 17, 1982.

The instant petition is timely filed within ninety days of the entry of the November 22, 1982 Order.

Neither the district court nor the Court of Appeals decided any federal question.

If this Honorable Court is so disposed, petitioner respectfully points out that this Court's jurisdiction could be invoked under 28 U.S.C. 1257(2), as her petition for consecutive rehearing in Case No. 79-5777, Hayes v. Board of Trustees of The Clark County School District, 444 U.S. 1009, 444 U.S. 1061, 100 S. Ct. 994, reh. denied, 445 U.S. 973 (1980), has never been

denied, and is presumably still pending befor this Honorable Court.

Hayes v. Board of Trustees, etc., supra, is one of the three appeals from the Nevada Supreme Court which are encompassed in the instant action.

(2) Hayes also respectfully points outs that there is a strong probability that this Court did grant certiorari in 1980 in one of the cases encompassed in this action: Case No. 11992 from the Nevada Supreme Court, Hayes v. Gladstone and Iverson ("Gladstone"), which was part of Case No. 79-6152 in this Court, Hayes v. Valley Bank of Nevada; Hayes v. Gladstone, Iverson, 446 U.S. 902, 448 U.S. 908, (1980), an appeal taken pursuant to 28 U.S.C. 1257(2).

If certiorari were granted, Hayes was never so advised and she has not been able, despite numerous requests, to obtain records and information from the Clerk of this Court.

STATEMENT OF THE CASE

This case concerns a complaint for a declaratory judgment that Nev. R. of App. p. 46(b), prior to its amendment, was unconstitutional and invalid and for an injuntion enjoining the Nevada Supreme Court from enforcing said Rule or dismissing her appeals pursuant to said Rule 46(b).

The court did not decide any question presented. By the time the district court issued its unsigned Minute Order dismissing the Complaint, but not the action, the Nevada Supreme Court had dismissed Hayes's pro se civil appeals of right and Hayes had taken appeals to this court pursuant to 28 U.S.C. Sec. 1257(2), infra, p. 13.

Hayes took a precautionary appeal to the Court of Appeals, which improvidently heard this action.

Background Of Cases Which Are Encompassed In This Action

All of the cases mentioned hereafter stem from actions which arose in the state courts of Nevada.

In 1979, Hayes, then a second year law

student, had three appeals pending in the Nevada Supreme Court. These actions had arisen in 1976 and 1977.

The Nevada Supreme Court would not grant her leave to represent herself in these civil appeals of right, pursuant to Nev. R. of App. P. 46(b). She did not have money to hire an attorney.

Basically, there are two actions--one concerning Valley Bank of Nevada and the other concerning the Clark County School District and related persons.

The Nevada Supreme Court Cases

(1) No. 10004, Hayes v. Board of Trustees of the Clark County School District, ("School District"), which arose from the District's breach of an employment contract.

Hayes had dismissed her attorney for good cause after he took the appeal.

(2) No. 11992, Hayes v. Gladstone and Iverson, ("Gladstone"), which in

actuality arose from the same set of circumstances as the School District action. On her former attorney's suggestion, Hayes brought this action in proper person in 1978.

She appealed from the trial court's denial of an injunction to enjoin the Attorney General of Nevada from representing the defendants.

This action is still pending in the state trial court. The Attorney General of Nevada has refused to remove this case, or to consent to a dismissal without prejudice or a stay of proceedings.

(3) No. 11631, Valley Bank v. Hayes, sub nom. Hayes v. Valley Bank. ("Valley Bank"), an appeal from the trial court's conclusion that Hayes's pro se Answer filed in April, 1977 did not sufficiently set forth her compulsory counterclaims as a counterclaim.

Federal District Court Cases

These are the same cases or involve the same cases as the appeals in the Nevada Supreme Court.

When it became apparent that the Nevada Supreme Court would dismiss Hayes's pro se civil appeals of right without any review pursuant to Nev. R. of App. P. 46(b), Hayes filed actions in the federal court.

(1) Hayes v. Honorable Justices of the Nevada Supreme Court, No. 79-142 RDF, Case No. CA 80-5311 in the Court of Appeals, is the instant case. Hayes sought declaratory and injunctive relief.

Hayes sought an injunction to enjoin the Nevada Supreme Court from enforcing Nev. R. of App. P. 46(b) or dismissing the School District, Gladstone and Valley Bank cases without review unless said dismissals were without prejudice to her right to pursue the same actions in federal court.

The district court dismissed the Complaint without opinion, p. 7a, infra.,

denied rehearing and clarification, p. 8a, infra, and struck Hayes's request for entry of judgment of dismissal, for findings, or for leave to amend. P. 9a, infra.

(2) Hayes v. Cannon, et al., Case No. 79-137, RDF is the School District action. Gladstone and Iverson are also defendants. The district court has twice issued what purported to be final judgments. The Court of Appeals dismissed for want of jurisdiction for want of a final judgment.

The District Court entered another Minute Order on February 4, 1983, dismissing the action without opinion.

(3) Hayes v. Valley Bank, et al., No. 79-182, HEC; No. CA 81-5630 in the Court of Appeals, No. 82-956 in this Court.

Hayes improvidently filed a Petition for Writ of Certiorari, which was denied by this Court on January 10, 1983.

The Court of Appeals improvidently heard this action as there was no final judgment.

The Clerk of this Court returned

all forty copies of Hayes's "Motion For Dismissal For Want Of Jurisdiction, Or Alternatively, Petition For Rehearing On Order Denying Certiorari on February 15, 1983.

Hayes will seek leave to have said motion filed and submitted to this Court.

Appeals To The United States Supreme Court Taken Pursuant To 28 U.S.C. Sec. 1257(2) In 1979.

After she had filed the federal district court cases, Hayes became aware of the holding in Mirin v. Justices of the Nevada Supreme Court, 415 F. Supp. 1178 (Nev. 1976), that only the United States Supreme Court could decide the issue of the constitutionality of Nev. R. of App. P. 46(b).

Due to the timing of dismissals by the Nevada Supreme Court, Hayes could not consolidate all three cases into one Jurisdictional Statement.

(1) Hayes v. Board of Trustees of the Clark County School District, supra, was

dismissed for want of jurisdiction and treating the papers as a petition for petition, denied certiorari.

(2) Hayes combined the Gladstone and Valley Bank cases, Nevada No. 11992 and No. 11631, supra, into one Jurisdictional Statement. This Court presumably dismissed Case No. 79-6152 in this Court for want of a properly presented federal question. (1980)

Certiorari may have been granted at least as to the Gladstone case.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS AND STATE STATUTES INVOLVED

The statutes and federal rules which are relevant to the determination that this case should be dismissed for want of jurisdiction are as follows: 28 U.S.C. 1254, 28 U.S.C. Sec. 1257(2), 28 U.S.C. Sec. 1291 and 28 U.S.C. Sec. 1292(b) and Federal Rules of Civil Procedure 52(a) and 54(b).

The constitutional provisions

statutes, and state statutes which are relevant to the determination of the constitutionality of Nev. R. of App. P. 46(b), if the Court is inclined to reach this issue, are as follows: the First, Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. Sec. 1983, 42 U.S.C. Sec. 1988, pertaining to an award of attorney's fees, Sherman Anti-Trust Act, 15 U.S.C. Sec.1, Nevada Supreme Court Rule 44 and Nevada Rule of Appellate Procedure 46(b).

Nevada Supreme Court Rule 44 provides:

> Nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any court in this state except the supreme court.

Nevada Rule of Appellate Procedure 46(b), prior to its October, 1981 amendment provided that:

> No party, except a habeas corpus petitioner, may appear in proper person before the Supreme Court.

This Court Lacks Jurisdiction To Consider This Case As It Was Never Properly "In" The Court Of Appeals

This Honorable Court lacks jurisdiction to consider this case as a petition for writ of certiorari as the action was never properly in the Court of Appeals, pursuant to 28 U.S.C. Sec. 1291 and 28 U.S.C. Sec. 1254.

Petitioner asks this Court to treat this petition as one for a writ of mandamus to the Court of Appeals to vacate its orders.

Petitioner makes this unusual request for three reasons:

1. The Clerk of this Court refused to file Hayes's "Petition for Writ of Certiorari, Or In The Alternative, Petition For Writ of Mandamus."

2. The time limit for filing a Petition for Writ of Certiorari is due to expire. Hayes files this Petition for Certiorari to preserve her rights in the event this Honorable Court finds that the case was properly in the Court of Appeals.

3. Hayes can not obtain the relief sought in the Court of Appeals, as the Clerk of that Court has refused to file any papers since the Court issued its Order of November 22, 1982. Hayes can not petition that Court to vacate its orders.

It is abundantly clear that the Court of Appeals never acquired jurisdiction as the district court's order dismissed only the complaint, and further, was not signed by the judge in conformance with Fed. R. of Civ. P. 58.

A case must be "in" the Court of Appeals for purposes of 28 U.S.C. Sec. 1254, which authorizes the Supreme Court's review of "cases in" the courts of appeals. Nixon v. Fitzgerald, ____ U.S. ____, L. Ed.2d 349, 102 S. Ct. 2690.

The historic policy of the federal courts has been that appeal will lie only from a final order which ends the litigation on the merits. Catlin v. U.S., 324 U.S. 229, 65 S. Ct. 631, 89 L.Ed. 911 (1945).

There was no other basis upon which the Court of Appeals could have assumed jurisdiction.

There was no certification pursuant to Fed. R. of Civ. P. 54(b), even assuming that the district court had ruled on any issue, which it did not.

The case does not involve a "serious and unsettled question" of sufficient magnitude to fall within the "collateral order" doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 641, 69 S. Ct. 1221.

No question was decided by the district court and there was, therefore, no order before the Court of Appeals.

An Order dismissing a complaint but not the action is not appealable under 28 U.S.C. Sec. 1291 unless special circumstances clearly indicate that the action could not be saved by any amendment which the plaintiff could reasonably be expected to make. Jackson v. Nelson, 405 F. 2d 872 (9th Cir. 1968); Ruby v. Secretary of Navy, 365 F.

2d 385 (9th Cir. 1966), cert denied, 386 U.S. 1011, 87 S. Ct. 1358, 18 L. Ed. 2d 442 (1967).

In Ginter v. State Bar of Nevada, 625 F. 2d 830, the Ninth Circuit Court of Appeals held that an appeal must be dismissed if it is not clear from the record whether the district court dismissed only the complaint or the entire action, citing Clardy v. Levi, 545 F. 2d 1241, Jackson, supra, and Jones v. Pitchess, 469 F. 2d 678 (9th Cir. 1976).

In the instant case the district court specifically stated that it dismissed the complaint. See p. 8a, infra.

Had the court intended to dismiss the entire action, it surely would have so stated, especially as Hayes had requested additional findings of fact and conclusions of law.

The action was dismissed pursuant to the respondent's motion to dismiss. An order granting a motion to dismiss without opinion or reason therefore is not an appealable order. The Nevada Supreme Court had advanced several bases for dismissal.

Hayes has acted in good faith. In her Notice of Appeal and in every paper and brief filed in the Court of Appeals she has consistently contended that the Order of the district court was not a final judgment.

Petitioner contends that the district court was not divested of jurisdiction by her filing of a Notice of Appeal on April 18, 1980, as said order from which she was appealing was not a final judgment.

The district court erred, therefore in striking her later filed request, p. 9a, infra, and in failing to enter a Judgment of Dismissal, if it were its intent to enter a final judgment.

Hayes points out to this court that the respondents, presumably for their own purposes, have never challenged the jurisdiction of the Court of Appeals, notwithstanding that they filed a motion to dismiss on other grounds, which motion was denied.

If This Court Granted Certiorari In One Of The Component Cases In 1980, Petitioner Should Be Allowed To File Briefs Pursuant To Said Grant

As set forth, supra, p. 7 and 14, there are indications that this Court may have already granted certiorari in one of the cases encompassed in the instant action, which is concerned with the same federal quesrion presented herein: the constitutionality of Nev. R. of App. P. 46(b).

Case No. 11992, Hayes v. Gladstone and Iverson was combined by Hayes with Case No. 11691 from the Nevada Supreme Court, Valley Bank, and docketed as one case, No. 79-6152 in this Court.

The docket sheet, all correspondence from the Clerk, the certificate of judgment and the official reports at 446 U.S. 902, however, show only the Valley Bank case. The Gladstone case does appear with Valley Bank at 448 U.S. 908.

The docket sheet incorrectly shows that Valley Bank filed a motion to dismiss, which it did not, and erroneously lists Larry Struve as "counsel for appellee," (in the singular). Struve is the Chief Deputy General of Nevada and he did not,

and could not, represent Valley Bank.

Hayes's numerous requests to the Clerk of this Court for copies of the docket sheet in Case No. 11992 (Gladstone), for copies of appearance of counsel forms filed by the appellees in Case No. 79-6152 or joinders or waivers, and for an explanation regarding the notation in the Supreme Court Reporter have been unavailing.

The Clerk has returned copies of Hayes's "Motion for Correction of Docket Sheets and Records and For Clarification of Status of Case No. 79-6152 and Case No. 79-5777 (School District)" to Hayes several times without submitting said motion to Mr. Justice Rehnquist, to whom it was addressed.

Said motion has appendices containing copies of Hayes's extensive correspondence with the Clerk of this Court, and copies of timely filed motions which were not presented to the Court.

The "Cumulative Table of Dispositions, Citations Not Available" section of Volume 101, S.Ct. Reporter, LXXXIII, has the following notation:

> "Nev. 11992--app. dis. cert gr. 100 S. Ct. 1826; reh den 100 S.Ct. 3052" (Emphasis added.)

If certiorari were granted, Hayes was never so notified.

THE COURT OF APPEALS ERRED IN STATING THAT IT "AFFIRMED" THE DISTRICT COURT AND IN MAKING FINDINGS OF FACT SUA SPONTE

The Court of Appeals improvidently heard this action and erroneously stated that it "affirmed" the district court, whereas there was no finding, opinion or decision to affirm.

The district court, by dismissing only the Complaint, impliedly found that Hayes had standing to challenge Nev. R. of App. P. 46(b), that the Nevada Supreme Court had

dismissed Hayes's appeals pursuant to said Rule and that Hayes was injured thereby, and that there was a justiciable controversy.

In clear disregard of the command of Fed. R. of Civ. P. 52(a), the Court of Appeals overturned said implied findings and conclusions and made the following erroneous "findings" of its own:

1. The court concluded that Hayes had consented to the dismissal of her appeal in the School District case. There is no support in the record for such a finding, and the district court did not so find.

2. It concluded that the district court dismissed the case pursuant to Fed. R. of Civ. P. 12(b)(6), whereas the district court gave no reason for its dismissal and a dismissal pursuant to 12(b)(6) would conflict with the district court's dismissal of the Complaint only.

3. The Court failed to recognize that the district court did not decide the issue of the constitutionality of Nev. R. of App.

p. 46(b) and did not dismiss this action on the merits, but only dismissed the Complaint. (79-142, RDF).

4. The Court did not disclose until it issued its supplemental order, p. 1a, infra, that it was mistaken on a very substantial fact, as it did not realize that Hayes had already exhausted the remedy suggested and that she had taken appeals to this Court pursuant to 28 U.S.C. Sec. 1257(2).

5. The Court substantially erred in its conclusion that the district court had found that Hayes's appeal in the Valley Bank case was not dismissed pursuant to N.R.A.P. 46(b). In fact, the district court in Case No. 79-182, HEC found that the appeal was dismissed pursuant to and because of said Rule, but apparently declined to rule on the constitutionality of said dismissal because of its own mistaken belief that the district court in the instant case, No. 79-142, RDF (Justices) had dismissed the action

on the merits.

6. There is no evidence to support the court's conclusion that the Gladstone action did not involve an appealable order from the state trial court, and said "finding" of the Court of Appeals is contrary to the district court's dismissal of the complaint only and to this court's determinations.

7. The Court wrongly concluded only this Court had jurisdiction to decide the questions posed by the implementation of Nev. R. of App. P. 46(b). This Court dismissed Hayes's appeal taken pursuant to 28 U.S.C. 1257(2) for want of jurisdiction. Hayes v. Board of Trustees, supra., 445 U.S. 994.

Had the Court of Appeals understood the facts and issues in this case and in Case No. 81-5630 (Valley Bank), prior proceedings and the holdings of the district court, and that Hayes had taken appeals to this Court pursuant to 28 U.S.C. 1257(2), its decisions would have been substantially different.

This Court's Recent Denial Of Certiorari in Case No. 82-956 Does Not Establish A Res Judicata Ruling.

This Court recently denied certiorari in the companion case, 82-956, Hayes v. Valley Bank of Nevada, et al. Hayes did not have an opportunity to have her Reply Brief considered as the case was decided at conference only 24 days after issuance of the docketing letter.

Neither lower court decided any issue or federal question in said case, as set forth supra.

The Clerk returned Hayes's "Motion for Dismissal for Want of Jurisdiction, Or Alternatively, Petition for Rehearing" without filing said document. Hayes will resubmit said motion for dismissal in Case No. 82-956. Hayes did not combine these cases as the Court of Appeals denied her motions for consolidation, and this Court similarly declined to consolidate Case No. 79-5777 and No. 79-6152.

Nev. Rule of App. P. 46(b) Is Unconstitutional On Its Face And As Applied To Petitioner.

The implementation of Nev. R. of App. P. 46(b) deprives pro se litigants of the fundamental right of access to the courts, the right to petition for the redress of grievances, due process of law and the equal protection of the laws in contravention of the provisions of the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

Not only the residents of Nevada are affected. Citizens of other states who have adverse judgments entered against them cannot seek redress in proper person in the Nevada Supreme Court.

The issue is not rendered moot by the fact that the Nevada Supreme Court has amended Rule 46(b) to permit pro se litigants to file briefs and papers with leave of court, nor by the fact that Hayes is now an attorney.

Hayes has suffered damage because her appeals were dismissed without appellate review and she has no forum in which to litigate her meritorious claims and seek redress.

This Rule impairs the guarantee of freedom of speech and denies the equal protection of the laws to those who can not obtain an attorney because they lack money or are unpopular litigants or espouse unpopular causes.

The State of Nevada and Nevada Supreme Court have never asserted or shown any justification or rational basis, much less a compelling state interest which would support this Rule.

All appeals in Nevada are as of right. Nev. R. of App. P. 46(b) takes away the statutory right provided by Nev.R. of App. P. 3A, which lists appealable determinations.

A litigant may not be denied access to the appropriate judicial tribunal unless the bar to judicial relief can be constitutionally justified. Mendez v. Heller, 420 US. 916, 95 S. Ct. 1107. Roberts v. LaVallee,

389 U.S. 40.

Effective access to the courts is a fundamental constitutional right. Bounds v. Smith, 430 U.S. 817, 97 S. Ct. 1491 (1977). Gaglie v. Ulibarri, 507 F. 2d 721 (9th Cir. 1974).

To interpose any financial consideration between an indigent and his right to sue is to deny him the equal protection of the laws. Smith v. Bennett, 365 U.S. 708.

The constitutional guaranties of due process and equal protection require that persons forced to settle their claims through the judicial process must be given a right to be heard and to have full access to the courts. Boddie v. Connecticut, 401 U.S. 731, 91 S.Ct.

Hayes meets the tests articulated in Boddie, supra, United States v. Kras, 409 U.S. 434 (1973), and Ortwein v. Schwab, 410 U.S. 656, 93 S. Ct. 1172. The judicial process was the only effective means available to her, and the courts had a monopoly over these means.

Hayes had to assert her claims as compulsory counterclaims in the Valley Bank action and state law mandates that a contract action against a school district must be brought in the state district court.

Nev. R. of App. P. 46(b) becomes even less defensible in light of the fact that the allowing non-attorneys to represent themselves would not cause any expenditure of state funds nor would the state lose any fees.

No court has ever ruled on the constitutionality of Nev. R. of App. P. 46(b), although this issue is frequently presented in the federal district courts of Nevada and in the Court of Appeals and is a perennial issue before this Honorable Court.

This Court has never found that Nev.R. of App. P. 46(b) does not present a substantial federal question.

Hayes respectfully suggests that if this Court is not disposed to dismiss this case, that it enter a definitive ruling on 46(b).

Hayes Was Deprived Of Due Process
As The Court Of Appeals Was Not
An Impartial, Unbiased Tribunal

The Court of Appeals' comments about Hayes's alleged frivolous motions and its refusal to even allow Hayes to respond to the inaccuracies in its Orders and to point out misconceptions and its willingness to manufacture defenses for the defendants which they had not asserted themselves and could not, all demonstrate that the panel which heard this case and Case No. 81-5630 was not an unbiased, neutral tribunal.

The Court of Appeals was perhaps misled by a comment made by the district judge in the Valley Bank case. Judge Harry Claiborne wrongly stated that Hayes had disobeyed his Order, which she had not. Judge Claiborne has issued an Order that Hayes should file an Amended Complaint by October 10, 1980 and serve all defendants by October 17, 1980.

Hayes timely filed said Complaint and delivered sufficient copies of the

summonses and complaint with instructions for service to the United States Marshal a week early, on October 10, 1980.

District Judge Claiborne unfairly blamed Hayes because the Marshal did not serve all defendants by October 17, 1980.

The Court of Appeals failed to note in its Memorandum that the last paragraph was in reference to and a denial of appellee TYMSHARE TRANSACTIONS SERVICE's motion for sanctions.

The docket sheets in both the district court and Court of Appeals will verify that Hayes has not made any inordinate number of motions.

This Court has made it clear that "(t)he Due Process Clause entitled a person to an impartial and disinterested tribunal in both civil and criminal cases." Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

A biased decisionmaker is constitutionally unacceptable. Withrow v. Larkin, 421 U.S. 35, (1974). Gibson v. Berryhill, 411 U.S. 564 (1973).

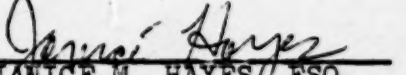
For whatever reason, the panel had a prejudicial impression of Hayes that is not based on the facts and record, and said bias was not apparent until Hayes received the Order entered November 22, 1982, p. 1a, infra.

CONCLUSION

This Honorable Court should dismiss this action for want of jurisdiction as the case was never properly in the Court of Appeals, and enter an Order directing the Court of Appeals to vacate its Orders and to remand this action to the district court for trial.

If the court is not so disposed, Hayes prays that the Court grant her petition for a writ of certiorari.

Respectfully submitted,



JANICE M. HAYES, ESQ.
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Petitioner

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES, Plaintiff-Appellant, v. THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA, Defendants-Appellees	FILED Nov. 22,* 1982 * CA 80-5311
JANICE HAYES, Plaintiff-Appellant, v. VALLEY BANK OF NEVADA, ET AL., Defendants-Appellees.	CA 81-5630 ORDER

Before: BROWNING, Chief Judge, TANG and FARRIS, Circuit Judges.

This ORDER is prompted by Hayes's latest filing in these related cases, a petition for rehearing on the Court's September 7 Order denying her Motion for Stay of the Mandate in 80-5311. We have

previously indicated that Hayes could not properly bring an action seeking to enjoin the enforcement of Nev. R. of App. P. 46(b) because her appeals to the Nevada Supreme Court were not dismissed pursuant to that Rule. 1/

Even if the Nevada Supreme Court dismissed on the authority of Nev. R. App. 46(b)'s then prohibition against appearances in proper person as Hayes alleges, our conclusion would be the same. The usual procedure for parties who believe their constitutional rights have not been upheld by a state's highest court is to appeal to the Supreme Court of the United States. In extraordinary cases a federal district court may disrupt the usual functioning of the system and enjoin a state civil proceeding under 42 U.S.C. Sec. 1983. See Mitchum v. Foster, 407 U.S. 225 (1972). However, in none of Hayes's numerous filings with this Court has she shown that she would be injured in any way by pursu-

the normal course for her appeal. She has not demonstrated and, we are convinced, cannot demonstrate that she is entitled to the drastic relief she seeks.

Hayes is advised that the panel is inclined to view with disfavor additional filings in this court in cases No. 80-5311 or No. 81-5630.

FOOTNOTE

1/ In our Memorandum decision in 80-5311 we referred only to Hayes's appeal against the School District which was not dismissed under Nev. R. App. P. 46(b), but at her request. Hayes states that we misconstrued the nature of her action which she explains also covered the dismissals of the appeals in her suits against the Valley Bank and Gladstone and Iverson. This contention has no bearing on our ruling that Nev. R. App. P. 46(b) was not implicated. Our Memorandum decision in 81-5630 concluded that Hayes's appeal

against Valley Bank was dismissed for failure to file a timely brief. In Gladstone and Iverson the appeal was dismissed because the challenged order of the challenged order of the state trial court denying Plaintiff's Motion to Set Aside the Appearance of the Attorney General as Counsel for the Defendants was not appealable.

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* Order was entered November 22, 1982. The Petition For Writ of Certiorari was filed on the due date, October 18, 1982, a month earlier. The Order denying hearing of the Memorandum Order was entered on August 16, 1982. Case No. 82-956, Hayes v. Valley Bank, et al.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES,

Plaintiff-Appellant,

vs.

THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA; JOHN C. MOWBRAY, CAMERON M. BATJER, ELMER GUNDERSON, NOEL MANOUKIAN, GORDON THOMPSON, INDIVIDUALLY and in their capacities as JUSTICES OF THE NEVADA SUPREME COURT,

Defendants-Appellees.

FILED

June 17, 1981

CA No. 80-5311

DC No. 79-142

MEMORANDUM

Appeal from the United States District Court for the District of Nevada

Roger D. Foley, District Judge, Presiding

Argued and submitted May 3, 1982

Before: BROWNING, Chief Judge, TANG and FARRIS, Circuit Judges.

We find no merit in Hayes's appeal of the district court's dismissal of her action. Her appeal before the Nevada Supreme Court

was not dismissed on the basis of Nev. R. App. P. (sic) 44 and 46(b)*, but at her request.

Hayes asserts no cognizable ground to enjoin the Nevada Supreme Court in the federal district court. *Mitchum v. Foster*, 407 U.S. 225 passim, (1972); *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S.281, 286-87 (1970). Whether the dismissal was with or without prejudice is no basis for injunctive relief. Even a dismissal without prejudice would not erase the state trial court's decision on the merits.

We find no error in the district court's dismissal for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Affirmed.

* Nev. R. App. P. 44 is error. Should be Supreme Court Rule 44.

* On Hayes's motion, the Court corrected this error.

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA, Defendants.	CV-LV-79-142,RDF MINUTES OF THE COURT Dated: Feb.7,1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that the motion to dismiss, filed on behalf of the Defendants on July 31, 1979 is hereby granted.

IT IS FURTHER ORDERED that the motion for leave to prosecute action in forma pauperis, filed on behalf of the Plaintiff on August 3, 1979 is hereby granted.

IT IS FURTHER ORDERED that the motion to strike, filed September 17, 1979, on behalf of the Plaintiff is hereby denied.

CAROL C. FITZGERALD, CLERK

BY: *Faye McMillan*
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA, Defendants.	Civil-LV-79-142, RDF MINUTES OF THE COURT Dated: March 20, 1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that the motion for reconsideration of order dismissing complaint and denying motion to strike, filed on behalf of Plaintiff on February 20, 1980, is hereby denied.

CAROL C. FITZGERALD, CLERK

BY: *Faye McMillan*
DEPUTY CLERK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA, Defendants.	Civ-LV-79-142, RDF MINUTES OF THE COURT Dated: May 14, 1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that Plaintiff's request for entry of judgment of dismissal and findings of fact and conclusions of law, filed May 6, 1980, is hereby stricken..

CAROL C. FITZGERALD, CLERK

BY: Faye McMillan
DEPUTY CLERK

END OF DOCKET